

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE STATE UNIVERSITY	)	
STUDENT HOUSING FOUNDATION, a	)	
Delaware Corporation.,	)	
	)	C.A. NO. _____
Plaintiff,	)	
	)	(Removed from the Superior Court of the
v.	)	State of Delaware in and for Kent
	)	County, C.A. No. 07C-09-013-WCW)
AMBLING MANAGEMENT COMPANY,	)	
	)	
Defendant.	)	
	)	

**NOTICE OF REMOVAL**

**COMES NOW** Ambling Management Company (“AMC”), Defendant in the above-captioned matter, which is currently pending in the Superior Court of the State of Delaware in and for Kent County (the “Superior Court Action”), and, pursuant to 28 U.S.C. §§ 1441 and 1446, hereby removes the Superior Court Action to the United States District Court for the District of Delaware. In accordance with the provisions of 28 U.S.C. § 1446(a), AMC respectfully shows the Court as follows:

1.

On or about September 13, Delaware State University Student Housing Foundation (the “Foundation”) filed a civil action (“Complaint”) in the Superior Court of the State of Delaware in and for Kent County, C.A. No. 07C-09-013-WCW.

2.

True and correct copies of the Complaint, Summons, Order Appointing a Special Process Server, and Certificate of Non-Arbitration filed in the Superior Court Action are attached hereto as Exhibit "A."

3.

The Foundation served the Summons and Complaint upon the Secretary of State of the State of Delaware on September 17, 2007.

4.

The Foundation served a copy of the summons and Complaint on Ambling Management by registered mail on September 17, 2007.

5.

The Foundation's Complaint states on its face that Plaintiff, the Foundation is a Delaware corporation, with its principal place of business located at 1200 N. DuPont Highway, Dover, Delaware 19901.

6.

AMC is a Georgia corporation whose principal place of business is located at 348 Enterprise Drive, Valdosta, Georgia 31601. Accordingly, there is complete diversity of citizenship between the Foundation and AMC.

7.

The Foundation's Complaint alleges damages in an amount "in excess of \$1,500,000.00." As a consequence, the amount in controversy exceeds \$75,000.00, exclusive of fees, interest, and costs.

8.

Because of the complete diversity of citizenship between the parties and the size of the amount in controversy, this Court has original subject matter jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1332, and the action is removable to this Court pursuant to 28 U.S.C. §§ 1441(a) and (b).

9.

This Notice of Removal is filed within thirty (30) days of AMC's receipt of the Complaint, and is therefore timely under 28 U.S.C. § 1446 (b).

10.

Contemporaneously with the filing of this Notice of Removal, AMC has served written notices on counsel for Plaintiff and the Clerk of the Superior Court of the State of Delaware in and for Kent County, as provided by 28 U.S.C. § 1446(d).

11.

Pursuant to the provisions of 28 U.S.C. § 1446, copies of all process, pleadings, and orders filed in the State Court Action are attached hereto as follows:

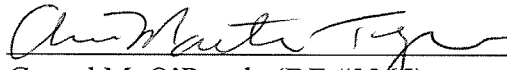
- (a) The Foundation's Complaint, Summons, Order Appointing a Special Process Server, and Certificate of Non-Arbitration filed in the Superior Court Action are attached hereto as Exhibit "A."

The parties have filed no other pleadings, process, or orders in the Superior Court Action.

**WHEREFORE**, AMC gives notice that the Superior Court Action is herewith removed to the United States District Court for the District of Delaware.

Respectfully submitted this 5<sup>th</sup> day of October, 2007.

**WOMBLE CARLYLE SANDRIDGE & RICE, PLLC**  
*A Professional Limited Liability Company*

By:   
Gerard M. O'Rourke (DE #3265)  
AnnaMartina Tyreus (DE # 4771)  
222 Delaware Avenue, 15th Floor  
Wilmington, DE 19801  
Main Number: (302) 252-4320  
Main Fax: (302) 252-4330  
gorourke@wcsr.com  
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Robert R. Ambler, Jr. (GA #014462)  
John G. Perry (GA#141609)  
**WOMBLE CARLYLE SANDRIDGE & RICE,  
PLLC**  
One Atlantic Center, Suite 3500  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Phone: (404) 872-7000  
Fax: (404) 888-7490  
rambler@wcsr.com  
joperry@wcsr.com

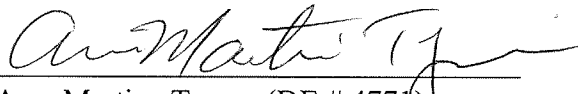
*Attorneys for Ambling Management Company*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within and foregoing *Notice of Removal* has been served upon counsel of record by placing same in the United States postal service with proper postage affixed thereto and addressed to the following:

Kathleen Furey McDonough  
Sarah E. DiLuzio  
Potter Anderson & Corroon, LLP  
1313 N. Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
(302)984-6000

This 5<sup>th</sup> day of October, 2007.

  
\_\_\_\_\_  
AnnaMartina Tyreus (DE # 4771)

# **EXHIBIT A**

SUMMONS SECRETARY OF STATE

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DELAWARE STATE UNIVERSITY  
STUDENT HOUSING FOUNDATION,  
a Delaware corporation,

Plaintiff,

v.

AMBLING MANAGEMENT COMPANY,

Defendant.

C.A. No. 07C-09-013 WW

NON-ARBITRATION CASE

JURY TRIAL DEMANDED

SUMMONS

THE STATE OF DELAWARE,  
TO THE SPECIAL PROCESS SERVER:

YOU ARE COMMANDED:

1. To summon the below-named defendant so that, within 20 days after service hereof upon defendant, exclusive of the day of service, defendant shall serve upon Sarah E. DiLuzio, plaintiff's attorney, whose address is c/o Potter Anderson & Corroon LLP, Hercules Plaza - Sixth Floor, 1313 North Market Street, Wilmington, DE 19801, an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

2. To serve upon defendant a copy hereof and of the complaint (and of the affidavit of demand if any has been filed by plaintiff).

Dated: \_\_\_\_\_

LISA ROBINSON

Prothonotary

*Janie Morris*

Per Deputy

RECEIVED  
AND  
FILED  
07 SEP 13 PM 4:30  
KENT COUNTY  
PROTHONOTARY

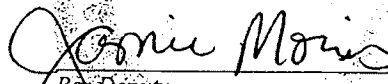
AMBLING MANAGEMENT COMPANY

**TO THE ABOVE-NAMED DEFENDANT:**

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the amended complaint (or in the affidavit of demand, if any).

LISA ROBINSON

*Prothonotary*

  
\_\_\_\_\_  
*Per Deputy*



## SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: NEW CASTLE ☐ KENT ☒ SUSSEX ☐Civil Action Number: 07C-09-013 WW

Civil Case Code: CDEJ

Civil Case Type: Declaratory Judgment

(SEE PAGE TWO FOR CIVIL CASE CODE &amp; CIVIL CASE TYPE)

<p>Caption:</p> <p>DELAWARE STATE UNIVERSITY STUDENT HOUSING FOUNDATION, a Delaware corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>AMBLING MANAGEMENT COMPANY,</p> <p style="text-align: center;">Defendant.</p>	<p>Name and Status of Party filing document:</p> <p>Delaware State University Student Housing Foundation, Plaintiff</p> <p>Document Type: (e.g., COMPLAINT; ANSWER WITH COUNTERCLAIM)</p> <p>Complaint</p> <p>Non-Arbitration <input checked="" type="checkbox"/> eFile <input checked="" type="checkbox"/></p> <p style="text-align: center;">(CERTIFICATE OF VALUE MAY BE REQUIRED)</p> <p>Arbitration <input type="checkbox"/> Mediation <input type="checkbox"/> Neutral Assessment <input type="checkbox"/></p> <p>DEFENDANT (CHECK ONE) ACCEPT <input type="checkbox"/> REJECT <input type="checkbox"/></p> <p>JURY DEMAND YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p> <p>TRACK ASSIGNMENT REQUESTED: (CHECK ONE)</p> <p>EXPEDITED <input type="checkbox"/> STANDARD <input checked="" type="checkbox"/> COMPLEX <input type="checkbox"/></p>
<p>ATTORNEY NAME(S):</p> <p><u>Kathleen Furey McDonough</u> <u>Sarah E. DiLuzio</u></p> <p>ATTORNEY ID(S):</p> <p><u>I.D. 2395</u> <u>I.D. 4085</u></p> <p>FIRM NAME:</p> <p><u>Potter Anderson &amp; Corroon LLP</u></p> <p>ADDRESS:</p> <p><u>Hercules Plaza, 1313 N. Market Street,</u> <u>P.O. Box 951, Wilmington, DE 19899-0951</u></p> <p>TELEPHONE NUMBER:</p> <p><u>302-984-6000</u></p> <p>FAX NUMBER:</p> <p><u>302-658-1192</u></p> <p>E-MAIL ADDRESS:</p> <p><u>sdiluzio@potteranderson.com</u></p>	<p>Identify any related cases now pending in the Superior Court by Caption and civil action number including judge's initials</p> <hr/> <hr/> <hr/> <p>EXPLAIN THE RELATIONSHIP(S):</p> <hr/> <hr/> <hr/> <hr/> <p>OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:</p> <hr/> <hr/> <hr/> <hr/> <p style="text-align: center;">(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGE.)</p>

THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND/OR IF THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRUCK.

## SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS) INSTRUCTIONS

### CIVIL CASE TYPE

Please select the appropriate civil case code and case type (e.g., CODE - AADM and TYPE - Administrative Agency) from the list below. Enter this information in the designated spaces on the Case Information Statement.

<p><b>APPEALS</b>  AADM- Administrative Agency  ACER - Certiorari  ACCP - Court of Common Pleas  AIAB - Industrial Accident Board  APSC - Public Service Commission  AUIB - Unemployment Insurance Appeal Board</p> <p><b>COMPLAINTS</b>  CASB - Asbestos  CAAA - Auto Arb Appeal *  CMIS - Civil Miscellaneous  CACT - Class Action  CCON - Condemnation  CDBT - Debt/Breach of Contract *  CDEJ - Declaratory Judgment  CDEF - Defamation *  CEJM - Ejectment *  CATT - Foreign &amp; Domestic Attachment  CFJG - Foreign Judgment *  FRD - Fraud Enforcement  CINT - Interpleader  CLEM - Lemon Law *  CLIB - Libel *  CMAL - Malpractice *  CPIN - Personal Injury *  CPIA - Personal Injury Auto *  CPRL - Products Liability *  CPRD - Property Damage *  CRPV - Replevin  CSBI - Silicone Breast Implant  CSPD - Summary Proceedings Dispute  CTAX - Tax Appeal  CCCP - Transfer from CCP*  CCHA - Transfer form Chancery *</p> <p><b>INVOLUNTARY COMMITMENTS</b>  INVC- Involuntary Commitment</p>	<p><b>MISCELLANEOUS</b>  MAFF - Application for Forfeiture  MAAT - Appointment of Attorney  MGAR - Appointment of Guardianship  MCED - Cease and Desist Order  MCON - Civil Contempt/Capias  MCVP - Civil Penalty  MSOJ - Compel Satisfaction of Judgment  MCRO - Complaint Requesting Order  MCTO - Consent Order  MIND - Destruction of Indicia of Arrest  MHAC - Habeas Corpus  MTOX - Hazardous Substance Cleanup  MFOR - Intercept of Forfeited Money  MISS - Issuance of Subpoena/Material Witness  MMAN - Mandamus  MOUT - Out of State Deposition  MROP - Petition for Return of Property  MROD - Road Resolution  MSAM - Satisfy Mortgage  MSEL - Sell Real Estate for Property Tax  MSEM - Set Aside Satisfaction of Mortgage  MSSS - Set Aside Sheriff's Sale  MSET - Structured Settlement  MTAX - Tax Ditches  MREF - Tax Intercept  MLAG - Tax Lagoons  MVAC - Vacate Public Road  MPOS - Writ of Possession  MPRO - Writ of Prohibition</p> <p><b>MORTGAGES</b>  MORT - Mortgage</p> <p><b>MECHANICS LIENS</b>  LIEN - Mechanics Lien *</p>
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\* Case types subject to Arbitration Rule 16.1 – Alternative Dispute Resolution

### DUTY OF THE PLAINTIFF

Each plaintiff/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the complaint.

### DUTY OF THE DEFENDANT

Each defendant/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the answer and/or first responsive pleading.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DELAWARE STATE UNIVERSITY  
STUDENT HOUSING FOUNDATION,  
a Delaware corporation,

Plaintiff,

v.

AMBLING MANAGEMENT COMPANY,

Defendant.

C.A. No. \_\_\_\_\_

NON-ARBITRATION CASE

JURY TRIAL DEMANDED

CERTIFICATE OF NON-ARBITRATION

I, Sarah E. DiLuzio, attorney for plaintiff, hereby certify in good faith at this time, in my opinion, that this is an action for breach of contract where the monetary damages are in excess of One Hundred Thousand Dollars (\$100,000), exclusive of costs and interest, and that this action is therefore excepted from compulsory arbitration pursuant to Superior Court Civil Rule 16.1(a).

POTTER ANDERSON & CORROON LLP

By: 

Kathleen Furey McDonough (I.D. # 2395)

Sarah E. DiLuzio (I.D. # 4085)

Hercules Plaza, 6th Floor

1313 N. Market Street

P.O. Box 951

Wilmington, Delaware 19801

Telephone: (302) 984-6000

Attorneys for Plaintiff Delaware State  
University Student Housing Foundation

Dated: September 12, 2007  
815520

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DELAWARE STATE UNIVERSITY  
STUDENT HOUSING FOUNDATION,  
a Delaware corporation,

Plaintiff,

v.

AMBLING MANAGEMENT COMPANY,

Defendant.

C.A. No. 07C-09-013 WLW

NON-ARBITRATION CASE

JURY TRIAL DEMANDED

RECEIVED  
AND  
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07 SEP 13 PM 4:25  
KENT COUNTY  
PROTHONOTARY

COMPLAINT

Plaintiff Delaware State University Student Housing Foundation ("the Foundation"), as  
and for its complaint against Defendant Ambling Management Company ("Ambling"), alleges as  
follows:

Nature of the Action

1. This is an action for declaratory judgment, breach of contract, and tortious interference with business relations. Pursuant to contracts by and among Ambling, the Foundation and DSU, Ambling agreed to manage, maintain and operate the Foundation's two properties in a "First Class Manner." The properties provide housing for students of Delaware State University. Ambling has failed to do so, and its failure to fulfill its contractual obligations has resulted in the deterioration of the properties and, more importantly, has resulted in conditions that pose health and safety risk to the students of Delaware State University. The Foundation seeks a declaratory judgment that Ambling has breached the parties' two contracts, as well as damages in connection with those breaches and the resultant harm to the Foundation's relationship with those whom it serves.

The Parties

2. Plaintiff Delaware State University Student Housing Foundation is a Delaware corporation with its principal place of business located at 1200 N. DuPont Highway, Dover, Delaware 19901.

3. Defendant Ambling is a Georgia corporation with its principal place of business located at 348 Enterprise Drive, Valdosta, Georgia 31601.

4. This Court has jurisdiction over Defendant Ambling pursuant to 10 *Del. C.* § 3104, because Ambling transacts business in Delaware; contracts to provide goods and services in Delaware; and/or has consented to the jurisdiction of this Court by contract.

The Contracts

5. The Foundation is the leasehold owner of two properties, the University Courtyard Apartments (the "Courtyard") and the University Village (the "Village"), located on the main campus of Delaware State University ("DSU") in Dover, Delaware. The Courtyard is comprised of a 416- bed student housing facility and the Village contains a 628- bed student housing facility and a student dining hall. Both properties are maintained for the sole benefit of DSU, and only DSU matriculated students, faculty or staff are eligible tenants.

6. Ambling provides property management services to universities across the country, and advertises that it provides "a full suite of management services and solutions." Ambling further proclaims in its marketing material that: "Every owner, financial institution and university we have the privilege to serve is unique and our continued success is based on our flexibility to work in a constantly changing environment."

7. The Foundation entered into a multi-million dollar Management Agreement with Ambling, dated January 1, 2004, which appointed Ambling as an independent contractor to manage and lease the Courtyard apartments. (Attached as Exhibit A.)

8. The Foundation entered into a second multi-million dollar Management Agreement with Ambling, dated August 1, 2005, which appointed Ambling as an independent contractor to manage and lease the Village apartments. (Attached as Exhibit B.)

9. The Management Agreements for the Courtyard and the Village are nearly identical in all relevant respects. Both Agreements provide that “[Ambling] shall provide all services reasonably necessary, proper, desirable or appropriate for the successful management and operation of the Premises in First Class Manner.” (See Ex. A and B, § 2.2.)

10. “First Class Manner” is defined by both Management Agreements to mean “keeping the Premises in good condition and repair, free of dirt, rubbish, snow, ice, graffiti and unlawful obstructions, and in compliance with all applicable legal requirements.” (See Ex. A and B, § 1.1.)

11. Specifically, Ambling is required to:

[O]ffer space in the Premises and use its best efforts to cause the space in the Premises to be fully leased . . . to Tenants which are Eligible Tenants who are Creditworthy on the best terms available for [the Foundation], acting in the best interest of [the Foundation].

(See Ex. A and B, § 2.3.)

Prepare and . . . execute on behalf of [the Foundation] all Contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone, fuel, cleaning, garbage removal, pest control, Internet access, cable television, Premises security and other utilities and services necessary or appropriate for the management and operation of the Premises in accordance with the Annual Budget . . .

(See Ex. A and B, § 3.1(a)(ii).)

Purchase all supplies and equipment necessary or appropriate for the management and operation of the Premises in accordance with the Annual Budget . . .

(See Ex. A and B, § 3.1(a)(iii).)

[C]onsult with, and make recommendations to, [the Foundation] concerning the condition of the Premises and the necessity for maintenance, repair, alteration or Restoration thereof including the preparation of an annual schedule for maintenance and repair; contract for all work, labor and services necessary or appropriate to maintain and repair the Premises . . . promptly notify [the Foundation] upon learning that the condition of the Premises materially fails to meet any standard of maintenance and repair required under any Contract, Legal Requirement or Insurance Requirement . . .

(See Ex. A and B, § 3.1(a)(vii).)

12. Furthermore, the Agreements provide that Ambling “shall not commit or permit waste of the Premises.” (See Ex. A and B, § 3.1(g).)

13. As part of its leasing duties, Ambling is required to ensure that each tenant within the Courtyard and the Village signs a written lease, and abides by the terms of that lease. (See Ex. A and B, § 3.3; Article IV). It is Ambling’s responsibility to ensure that tenants are not violating their lease by, for example, allowing unauthorized people (non-DSU students) to live in the apartments or having pets. *Id.*

14. In exchange for Ambling’s management services, the Foundation paid it \$ 257,069.00 in management fees for the fiscal year ending May 31, 2006 and \$ 270,103.00 to date for fiscal year 2007.

15. The Management Agreements do not expire until July 31, 2016. (See Ex. A and B, Sect. 7.1). The Management Agreements provide, however, that the Foundation may

terminate the Agreements if an "Event of Default" occurs and is continuing. (*See* Ex. A and B, § 7.2).

16. The Agreements outline several Events of Default, including "gross negligence, willful misconduct, fraud malfeasance or breach of fiduciary duty"; "fail[ure] to follow any reasonable written direction of [the Foundation] with respect to the Premises"; and/or "fail[ure] to comply with any provision of th[e] Agreement[s]" (*See* Ex. A and B, §§ 7.2 (c), (e), (h)).

17. If an Event of Default arises, the Agreements require that Ambling be provided with written notice and a fifteen-day cure period. (*See* Ex. A and B, §§ 7.2 (c), (e), (h); 8.1). If Ambling fails to cure the defaults within the requisite period, the Foundation may terminate the Agreements.

18. The Management Agreements are governed by Delaware law. (*See* Ex. A and B, § 8.13).

#### The Breach/Default

19. For several months, the Foundation has become increasingly aware of, and dissatisfied with, problems with Ambling's management of the Courtyard and the Village. To this end, the Foundation has invited representatives from Ambling to attend its Board meetings for months so that the parties could work towards resolving the problems that were being reported.

20. At the April 26, 2007 Foundation Board meeting, Ambling was specifically advised that the Foundation is dissatisfied with its management of the properties. The Foundation Board identified specific areas, particularly with regard to security, with respect to which Ambling was failing to meet its contractual duty and that Ambling needed to correct.



21. The Foundation continued to work with Ambling representatives to resolve these problems. Indeed, the Foundation's counsel at the time wrote to Ambling on June 28, 2007 indicating that the Foundation was willing to meet with Ambling to discuss a resolution of the contract disputes. (6/28/07 Letter attached as Exhibit C.) Ambling did not respond to the Foundation's request for a meeting.

22. Nonetheless, the Foundation continued to pressure Ambling to fulfill its responsibilities under the terms of the Management Agreements.

23. In recent weeks, however, the Foundation has discovered that Ambling's failure to abide by the terms of the Management Agreements is a more widespread and serious problem than previously believed.

24. In early August 2007, DSU facilities personnel conducted inspections of the Courtyard and the Village in connection with the budgeting process for an anticipated capital campaign. DSU and the Foundation were shocked and disgusted with the conditions observed in many of the apartments – apartments that Ambling is paid to maintain in “first class” condition.

25. Most startling were conditions that pose a direct threat to the safety and security of DSU students. The Courtyard and the Village apartments are equipped with smoke detectors and “panic buttons,” that allow students to immediately summon assistance in the event of an emergency. The panic buttons are installed in every bedroom. During their inspections, DSU personnel found many smoke detectors and panic buttons were inoperable. Additionally, many apartment doors were damaged so that they did not properly or securely close.

26. The safety of DSU students is of paramount concern to both DSU and the Foundation. The smoke detectors, panic buttons, and secure outer doors installed in the Courtyard and Village are furnished to help ensure the students' safety. Ambling's failure to

maintain these devices in good working order is a breach of its responsibilities under the Management Agreements and poses an unacceptable risk to DSU students.

27. On August 10, 2007, Foundation President Amir Mohammadi wrote to the President of Ambling to notify it that, among other things, it needed to repair the non-functioning smoke detectors, panic buttons, and broken doors, and replace the unclean air vents that had been observed in several apartment units. (8/10/07 Letter is attached As Exhibit D.) Mr. Mohammadi's letter further advised Ambling that its recent practice of obtaining waivers from students allowing them to move into unsafe and unsanitary apartment units was not acceptable and the practice must be ceased.

28. Ambling did not respond to the August 10, 2007 letter.

29. Unfortunately, DSU personnel continued to find examples of Ambling's failure to maintain the Courtyard and Village apartments in a first class manner. During additional inspections, DSU observed black mold in several apartments. DSU immediately hired an independent contractor, Environmental Testing, Inc., to inspect the mold, evaluate the health risks it posed, and recommend a remediation plan. Environmental Testing, Inc. issued a report documenting its results, and finding that the mold growth was attributable to water damage to drywall, flooring and carpet below and adjacent to HVAC air handling units and the sinks of the affected apartments.

30. Environmental Testing's report explains that the water damage is a result of excess condensation from heat exchanger coils and refrigerant lines. Indeed, in one HVAC unit, the coil was frozen solid in ice due to excessive cooling. The excessive cooling and condensation was caused by Ambling's failure to properly maintain the air filters in the HVAC units, which allowed dirt and debris to pass around the filter and clog the coils.

31. Mold was also present behind sink backsplash boards in the units inspected due to an improper seal between the sink and the backsplash that allowed water to penetrate.

32. Environmental Testing recommended that a trained mold remediation contractor remove all water damaged materials, including drywall and flooring, using full containment enclosure with HEPA filtration; install commercial dehumidifiers to reduce humidity in the affected units; decontaminate or dispose of backsplash boards and properly seal the boards so water will not penetrate; properly clean the HVAC coils with HEPA vacuuming; install critical seals on all duct openings; and install the correct size air filters.

33. The Environmental Testing report warned that "quick fixes," such as application of bleach, would only temporarily remove surface growth and would not remedy the underlying mold growth.

34. DSU and the Foundation advised Ambling of the results of Environmental Testing's report and demanded that they immediately remediate the mold.

35. In addition to the inoperable safety devices and mold observed in many apartment units, DSU personnel also observed generally poor conditions in a number of apartments. These conditions included, but were not limited to:

- a. Many apartments had toilets or sinks that did not work properly.
- b. In several apartments, the appliances were damaged or broken.
- c. In other apartments, drywall was visibly damaged and the carpets are obviously in need of replacement.
- d. Finally, DSU observed a number of violations of the terms of individual leases, which Ambling had a duty to enforce. Many apartments had non-DSU students

residing in them, including, in one case, an infant. Several others had pets, which are not permitted in the facility.

36. Following DSU's discovery of these additional problems, Mr. Mohammadi again wrote to Ambling's President on August 17, 2007. (8/17/07 Letter attached as Exhibit E.) The August 17, 2007 letter put Ambling on Notice, as that term is defined in the Management Agreements, that it is in default of the Management Agreements, as defined by Section 7.2(h). The letter then outlined several examples of default, which conflict with Ambling's obligation under Section 2.2 to successfully manage and operate the "Premises in a First Class Manner."

37. The instances of default identified in the August 17, 2007 letter (hereinafter referred to as the "Notice of Default") include:

1. Generally uninhabitable rental units
2. Damaged and nonfunctioning appliances
3. Damaged or nonfunctioning toilets and sinks
4. Damaged drywall
5. Damaged and fetid carpets
6. Damaged and/or missing door jambs
7. Unchanged A/C and heating air filters
8. Mold on walls and floors in several units
9. Infant living in at least one unit despite repeated prior notices
10. Other safety issues

38. Each of the enumerated breaches were supported by photographs of representative apartments.

39. The Notice of Default also indicated that the items listed above constituted waste of the Premises, in violation of Section 3.1(g) of the Management Agreements.

40. Additionally, the Notice of Default advised Ambling that it had not provided the Foundation with a maintenance plan, as required by the Management Agreements, and that it

was further in default of Article IV of the Management Agreements for failure to adequately administer its leasing duties.

41. As outlined above, the Notice of Default triggered a fifteen-day cure period during which Ambling was required to remedy the breaches outlined in the Notice of Default.

42. Ambling responded to the Notice of Default by letter dated August 22, 2007, in which its President, William Blackwell, promised to “honor all of [Ambling’s] obligations under the management agreement.” (8/22/07 Letter attached as Exhibit F.)

43. Mr. Mohammadi wrote to Ambling again on August 31, 2007, reiterating that Ambling was required to remedy all defects identified in the Notice of Default, in both the Courtyard and the Village. (8/31/07 Letter attached as Exhibit G.)

44. On September 4, 2007, the final day of the cure period, Ambling’s President, Mr. Blackwell, wrote to the Foundation advising that “all items which [were] identified as defaults” have been “corrected, remedied and cured” by Ambling. (9/4/07 Letter attached as Exhibit H.)

45. Upon inspection, the Foundation discovered that was not the case. Despite months of notice of the Foundation’s dissatisfaction with their management and maintenance of the properties, the Notice of Default, and the cure period, Ambling remained in default.

46. Following the cure period, on September 5, 2007, DSU personnel again inspected representative units of the Courtyard and the Village to ensure that Ambling had rectified the identified problems, as it claimed. The inspection revealed that Ambling had not.

47. One particularly widespread problem was the outer doors on apartment units, which were routinely found to be damaged so that they did not close properly or securely. Indeed, virtually none of the apartments in which this problem was previously identified had been repaired post-cure period. One apartment has a door jamb that was obviously reused,

having been simply flipped upside down so additional holes could be drilled for the lock, leaving the prior holes as an easy access point for anyone trying to break in.

48. In several apartment units, the smoke detectors remained inoperable post-cure period. In some apartments, the smoke detectors were missing entirely, and wires were simply hanging from the ceiling where the detectors should have been.

49. Panic buttons remained inoperable, or missing altogether, in several apartments.

50. Although Ambling attempted to remedy the mold problem, its efforts were superficial and unsatisfactory. Generally, the mold identified around the HVAC units had been removed and the areas freshly painted. However, Ambling failed to remedy the root cause of the mold – the HVAC units were not cleaned, nor were the correct sized filters installed. In fact, just the opposite was observed.

51. In many apartments, the filters in the HVAC units were filthy and had obviously not been cleaned or changed in some time. Indeed, in a few apartments, the HVAC unit had a maintenance log posted indicating that no maintenance had been done to the unit since 2004 or 2005.

52. Despite Environmental Testing's report, several HVAC units still had coils frozen solid. Many other HVAC units still had filters that were too small, thereby allowing dirt and debris to flow freely through the unit and into the air. Still others had no filter at all.

53. Additionally, the second problem area identified as having mold growth, kitchen sinks, were not repaired at all. The splashboards on the sinks remain improperly sealed so that water can penetrate and potentially cause more mold.

54. As The Environmental Testing report warned, quick fixes will only temporarily remove surface growth and will not remedy the underlying mold growth. Ambling's attempts at

cure were quick fixes designed to mask the mold problem temporarily. Ambling made no effort to truly cure the default.

55. Ambling failed to repair broken toilets, sinks, and showers during the cure period, all of which had been previously identified as events of default. In many apartment units, the shower rods, which are extension-type rods, are too short for the space and students have resorted to stuffing paper or blocks of wood on one end just to keep it in place.

56. During their inspection on September 5, 2007, DSU personnel encountered several students who complained that they and their parents had to clean their apartment and shampoo the carpets when they moved in because they were so filthy.

57. Notwithstanding the efforts of many students, several apartments still have carpeting and flooring that is filthy and fetid.

58. Several apartments have damaged drywall that has not been repaired.

59. The broken or inoperable appliances previously identified have not been repaired.

60. Finally, the leasing violations identified by the Foundation have not been remedied. Apartments still have non-DSU students living in them and pets can still be seen within the Courtyard and the Village.

61. Residence Life staff accompanied the team of DSU inspectors on September 5, 2007 and checked the individuals present in the inspected apartments for valid DSU identification. Those who did not have it were required to leave immediately.

62. It is Ambling's responsibility to ensure that only authorized tenants are residing in the Courtyard and the Village. DSU and the Foundation staff accomplished in a single day what Ambling has failed to do for months (if not longer), *i.e.*, enforce the lease terms limiting tenancy to DSU students or staff.

63. As a result of Ambling's failure to cure its many breaches of the Management Agreements, Foundation President Amir Mohammadi wrote to Ambling on September 12, 2007 and advised that the Foundation is terminating those Agreements, effective immediately. (9/12/07 Termination Letter attached as Exhibit I.)

64. The Foundation further advised Ambling that it had until September 21, 2007 to vacate the premises.

65. The Foundation immediately assumed responsibility for the maintenance and operation of the Courtyard and the Village apartments, and began making necessary repairs.

**COUNT I: DECLARATORY JUDGMENT**

66. The Foundation repeats and realleges paragraphs 1 through 65 above as if fully set forth herein.

67. The Management Agreements obligate Ambling to manage and operate the Courtyard and the Village in a "first class manner," to prevent waste of the Premises, and to enforce lease terms that exist for the benefit of DSU students.

68. As outlined above, Ambling has completely failed to do so, despite the opportunity to cure.

69. An actual controversy exists between the Foundation and Ambling regarding the Foundation's right to terminate the Management Agreements.

70. Pursuant to the provisions of 10 *Del. C.* § 6501 *et seq.*, the Foundation is entitled to a declaratory judgment by the Court that Ambling materially breached the Management Agreements by its failure to appropriately maintain the Premises, and that the Foundation was therefore within its rights to terminate the Management Agreements and eject Ambling from the Premises.



**COUNT II: BREACH OF CONTRACT**

71. The Foundation repeats and realleges paragraphs 1 through 70 above as if fully set forth herein.

72. Defendant Ambling is bound by the terms of the Management Agreements, which required it to manage and operate the Premises in a first class manner, prevent waste of the Premises, and enforce lease terms that exist for the benefit of DSU students.

73. Ambling breached its obligations by failing to maintain and repair or replace damaged or inoperable safety devices; entry doors; toilets; sinks; drywall; carpeting; and HVAC units. Ambling further breached its obligations by failing to properly remediate mold contamination. Ambling further breached its obligations by failing to enforce valid lease terms.

74. As a result of Ambling's breach of the terms of the Management Agreements, the Foundation has suffered damages in excess of \$ 1,500,000.00.

**COUNT III: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

75. The Foundation repeats and realleges paragraphs 1 through 74 above as if fully set forth herein.

76. The Foundation maintains the Courtyard and the Village apartments for the benefit of DSU students, with whom they have a contractual relationship to provide, safe, clean, and appropriate housing.

77. Ambling's intentional failure to fulfill its obligations under the Management Agreements has adversely interfered with the Foundation's relationship with the DSU students whom it serves.

78. Ambling's breach of the Management Agreements is the proximate cause of the damage the Foundation had sustained to its relationship with DSU students.

79. As a result of Ambling's intentional interference, the Foundation has suffered undetermined damages to its reputation.

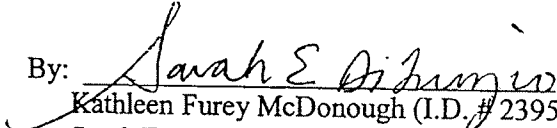
**PRAYER FOR RELIEF**

Plaintiff Delaware State University Student Housing Foundation respectfully requests that this Court enter judgment in its favor, and against Ambling, as follows:

- (a) declaring that defendant Ambling materially breached the Management Agreements and that the Foundation was therefore entitled to terminate those contracts;
- (b) against defendant Ambling for damages in excess of \$1,500,000.00, to be determined more particularly at trial;
- (c) against defendant Ambling for pre- and post-judgment interest on the sum of all damages awarded to the Foundation against defendant;
- (d) against defendant Ambling for the fees and costs incurred in asserting this action, including attorneys' fees; and
- (e) such other and further relief the Court may deem just and proper.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

By:   
Kathleen Furey McDonough (I.D. # 2395)  
Sarah E. DiLuzio (I.D. # 4085)  
Hercules Plaza, 6th Floor  
1313 N. Market Street  
P.O. Box 951  
Wilmington, Delaware 19801  
Telephone: (302) 984-6000

Attorneys for Plaintiff Delaware State  
University Student Housing Foundation

Dated: September 12, 2007  
815520v5



1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
302 984 6000

[www.potteranderson.com](http://www.potteranderson.com)

Sarah E. DiLuzio  
Attorney at Law  
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302 984-6279 Direct Phone  
302 658-1192 Fax

September 17, 2007

**BY REGISTERED MAIL -  
RETURN RECEIPT REQUESTED**

Ambling Management Company  
348 Enterprise Drive  
Valdosta, Georgia 31601

Re: Delaware State University Student Housing Foundation v. Ambling  
Management Company, Del. Super., C.A. No. 07C-09-013 WLW

To Whom It May Concern:

Enclosed please find copies of the Complaint and Summons filed in the above-referenced action on September 13, 2007. The Complaint and Summons were served upon the Secretary of State of the State of Delaware on September 17, 2007.

Service of these documents has been made upon the Secretary of State of the State of Delaware under the provisions of 10 Del. C. § 3104(d). Pursuant to 10 Del. C. § 3104(d), such service is as effectual to all intents and purposes as if it had been made upon you personally within the State of Delaware.

Sincerely,

A handwritten signature in cursive script that reads "Sarah E. DiLuzio".

Sarah E. DiLuzio

Enclosures  
816763/18877-009

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

IN AND FOR KENT COUNTY

DELAWARE STATE UNIVERSITY  
STUDENT HOUSING FOUNDATION,  
a Delaware corporation,

Plaintiff,

v.

AMBLING MANAGEMENT COMPANY,

Defendant.

C.A. No. 07C-09-013 WW

## NON-ARBITRATION CASE

## JURY TRIAL DEMANDED

## **ORDER APPOINTING A SPECIAL PROCESS SERVER**

The motion for Appointment of Special Process Server, having been presented by Plaintiff, and considered by the Court,

IT IS ORDERED this 14 day of September, 2007, that any employee of Parcels, Inc., who is over the age of 18 and who is not a party to this action, is hereby specially appointed pursuant to Superior Court Civil Rule 4(d), and directed to take such actions as may be necessary to effect prompt service of the summons, praecipe and complaint upon the defendant.

Under

Superior Court Judge

KENT COUNTY  
PROTHONOTARY

2007 SEP 14 PM 2:56

RECEIVED AND FILED

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Delaware State University Student Housing Foundation

(b) County of Residence of First Listed Plaintiff Kent County, Delaware  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kathleen F. McDonough, Sarah E. DiLuzio, Potter Anderson & Corroon,  
LLP; 1313 N. Market Street, Wilmington, DE 19899-0951; 302-984-6000

**DEFENDANTS**

Ambling Management Company

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) Gerard O'Rourke, Marina Tyreus; WOMBLE CARLYLE SANDRIDGE & RICE LLC; 222 Delaware Avenue, Suite 1501 Wilmington, DE 19801; 302-252-4320

**II. BASIS OF JURISDICTION**

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                                       |                                       |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing 28 USC 1332 (indicate the U.S. Civil Statute under which you are filing)

Brief description of cause:

CONTRACT DISPUTE**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$1.5 MILLION

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE